



**State of New Jersey**  
**GOVERNMENT RECORDS COUNCIL**

101 SOUTH BROAD STREET  
PO BOX 819  
TRENTON, NJ 08625-0819

**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**RICHARD E. CONSTABLE, III**  
*Commissioner*

**FINAL DECISION**

**July 23, 2013 Government Records Council Meeting**

Rafael Martinez  
Complainant

Complaint No. 2012-156

v.

New Jersey Department of Human Services,  
Division of Medical Assistance and Health Services  
Custodian of Record

At the July 23, 2013 public meeting, the Government Records Council ("Council") considered the July 16, 2013 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that the Custodian lawfully denied access to the responsive records as trade secret or proprietary information. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. Further, the Council need not address whether the Custodian knowingly and willfully violated OPRA because no unlawful denial of access occurred.

This is the final administrative determination in this matter. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Information about the appeals process can be obtained from the Appellate Division Clerk's Office, Hughes Justice Complex, 25 W. Market St., PO Box 006, Trenton, NJ 08625-0006. Proper service of submissions pursuant to any appeal is to be made to the Council in care of the Executive Director at the State of New Jersey Government Records Council, 101 South Broad Street, PO Box 819, Trenton, NJ 08625-0819.

Final Decision Rendered by the  
Government Records Council  
On The 23 Day of July 2013

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: July 26, 2013**



**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Supplemental Findings and Recommendations of the Executive Director  
July 23, 2013 Council Meeting**

**Rafael Martinez<sup>1</sup>  
Complainant**

**GRC Complaint No. 2012-156**

**v.**

**New Jersey Department of Human Services,  
Division of Medical Assistance and Health Services<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Regarding LogistiCare Solutions, LLC, via e-mail or on CD in Excel format:

1. Provider contact information (name, address telephone number, email and fax), owner or manager information;
2. Provider insurance coverage information (insurance carrier, policy number, expiration date, liability limits, policy inception and certificates of insurance);
3. Provider contract information (contract number, date of contract, type of contract, fees being paid, and types of services).<sup>3</sup>

**Custodian of Record:** Dianna Rosenheim  
**Request Received by Custodian:** March 14, 2012  
**Response Made by Custodian:** May 15, 2012  
**GRC Complaint Received:** May 24, 2012

**Background**

**May 28, 2013 Council Meeting:**

At its May 28, 2013 public meeting, the Council considered the May 21, 2013 Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, found that:

1. The GRC must conduct an *in camera* review of the requested records to determine the validity of the Custodian's assertion that the records constitute trade secrets or

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<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Charlotte Vrancart, Deputy Custodian, responded to the Complainant's OPRA request. Represented by Deputy Attorney General Jennifer Simons.

<sup>3</sup> The Complainant requested and received additional records that are not at issue in this Denial of Access Complaint.

proprietary information which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. See Paff v. NJ Department of Labor, Board of Review, 379 N.J. Super. 346 (App. Div. 2005).

2. **The Custodian must deliver<sup>4</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see # 1 above), a document or redaction index<sup>5</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4,<sup>6</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
3. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the outcome of the *in camera* review.

#### Procedural History:

On June 3, 2013, the Council distributed its Interim Order to all parties. On June 7, 2013, Mr. Salvador P. Simao, Esq., Counsel for LogistiCare Solutions, LLC, requested a stay of the Council's Order and requested to intervene in this matter. On June 10, 2013, the GRC granted LogistiCare's request to intervene and stated that it would review its Interim Order in light of the arguments submitted by LogistiCare. The GRC also stated that LogistiCare has until June 17, 2013 to submit additional correspondence and the Complainant must submit any responses by June 24, 2013.<sup>7</sup> Finally, the GRC extended the deadline to comply with the Interim Order until August 10, 2013.

#### Analysis

##### Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request "with certain exceptions." N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

OPRA excludes from the definition of a government record "trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this

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<sup>4</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as they arrive at the GRC office by the deadline.

<sup>5</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>6</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

<sup>7</sup> The Complainant did not submit a response to LogistiCare's request to intervene.

paragraph, trade secrets shall include data processing software obtained by a public body under a licensing agreement which prohibits its disclosure.” N.J.S.A. 47:1A-1.1.

The Council’s May 28, 2013 Interim Order required that the Custodian provide the responsive records to the Council for an *in camera* review. Subsequent to the Council’s Order, LogistiCare’s June 7, 2013 letter provided a substantively detailed defense of the Custodian’s denial of access to the responsive records based on the trade secret and proprietary information exemption. The Council is satisfied that, based on LogistiCare’s submission, the Custodian lawfully denied access to the responsive information as trade secret and proprietary information. N.J.S.A. 47:1A-1.1. Therefore, it is unnecessary for the Council to conduct an *in camera* review.

Thus, the Custodian lawfully denied access to the responsive records as trade secret or proprietary information. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. Further, the Council need not address whether the Custodian knowingly and willfully violated OPRA because no unlawful denial of access occurred.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that the Custodian lawfully denied access to the responsive records as trade secret or proprietary information. N.J.S.A. 47:1A-1.1; N.J.S.A. 47:1A-6. Further, the Council need not address whether the Custodian knowingly and willfully violated OPRA because no unlawful denial of access occurred.

Prepared By: Frank F. Caruso  
Senior Case Manager

Approved By: Brandon D. Minde, Esq.  
Executive Director

July 16, 2013